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EXAMINER				
LE, KHANH H				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/812,296

Applicant(s)

RITTMASER ET AL.

Examiner

KHANH H. LE

Art Unit

3688

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is responsive to the correspondence filed January 4, 2010. Claims 40-59 were and remain pending. Claims 40, 49 and 59 are independent and amended.

Claim Objections

2. Previous Claim Objections to Claims 40-57 and 49-57 are withdrawn following their amendment.

Response to Arguments

3. Applicant's arguments filed January 4, 2010 have been fully considered and some are persuasive. Therefore, in view of the amendment to claims 40, 49 and 59, the following rejections have been withdrawn:

Claims 40, 41, 45-47, 49, 50, 54-56 and 59 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,317,718 to Fano.

Claims 40 and 49 as alternatively rejected and claims 48 and 57 as rejected under 35 U.S.C. 102(e) as being anticipated by Cohen, US 6236330 B1, herein Cohen.

Claims 42-44 and 51-53 as rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,317,718 to Fano in view of Official Notices.

Claims 40, 41, 43, 46-50, 52, and 55-59 as rejected under 35 U.S.C. 102(e) as being anticipated by Bednarek et al. U.S. Patent No. 6,009,116. Claims 42, 44, 45, 51, 53 and 54 are

rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,009,116 to Bednarek et al.

However, upon further consideration, a new ground(s) of rejection is made below, using U.S. Patent No. 6,009,116 to Bednarek et al. Arguments if still relevant are addressed in the discussion below.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 40-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bednarek et al., U.S. Patent No. 6,009,116, in view of Official Notice (s).**

Bednarek discloses:

An integrated receiver decoder (IRD), commonly called a set-top box, has a global positioning system (GPS) receiver. The GPS receiver checks to see if

*the IRD is at an authorized location and allows descrambling of video signals only if the location is authorized. A central access control system, remote from the customers/viewers, has a high quality GPS receiver and sends some GPS data in the transmission medium used to send video signals to the customers. The set-top box, referred to as a customer access control, establishes different geographic restrictions on different of various video signals. Location-specific signals require that the set-top box be at a single fixed location for descrambling. **Region-specific signals are accessible only if the set-top box is in a geographic region authorized for reception, there being several such regions.** Large area signals are accessible anywhere within a large area including the regions. **Region-exclusion signals are accessible only if the set-top box is outside of one or more regions where reception is not allowed.***

Relevant Figures:

See Figures 1 (system level); 2 (user device; item 54 shows GPS); 7 (subscription system, definition of regions, identification of user device) , 8 (geographic and non geographic access control attributes) , 12 (determination whether STB within defined boundaries using GPS), 14 (determination of STB in one of the defined regions), Fig 15 (overlapping regions).

Thus, for claims 40, 49, 58, 59, Bednarek discloses:

A method for controlling the distribution of information from an information provider processor to a plurality of recipient processors on a communications network, based on the geographic locations of the recipient processors (see e.g. abstract; Figure 1, item 16 (GPS receiver); item 16: conditional access system; Figure 7 and their associated texts); the method comprising:

associating a respective positioning system with each respective recipient processor for providing location information to the associated recipient processor (see e.g. abstract; Figure 1, item 16 (GPS receiver); item 16: conditional access system; Figure 7 and associated text);

receiving location information from each recipient processor, the location information corresponding to the geographic location of the given recipient processor from which the location information is received (see at least abstract; Figs. 1 and 7 and associated text; (col. 16 lines 28-32);

determining, from the location information, that the geographic location of each of one or more of the recipient processors from which the location information is received is within a predefined location or region and determining that each of another one or more of the recipient processors from which the location information is received is not within the predefined location or region;

(interpreted as determining, from the location information, whether the geographic location of the each recipient processor from which the location information is received is within or without a predefined location or region (e.g. abstract; col. 16 lines 33-46; e.g. Figs. 7 and associated text; or e.g. Figure 8 items 426, 430 and associated text).

Claims 40, 49 and 59 further claim:

a) requiring predefined additional information before providing each recipient processor determined to be within the predefined location or region access to first information; and providing each recipient processor not determined to be within the predefined location or region with access to first information without requiring the predefined additional information (as recited in claim 40);

or

*b) requiring predefined additional information before providing each recipient processor determined to be within the predefined location or region access to first information; and providing each recipient processor not determined to be within the predefined location or region with access to **second information** without requiring the predefined additional information, **wherein one of the first and second information is a partial access but not full access***

information to a product or service and the other of the first and second information is full access information to the product or service (as recited in claim 49);

or

c) requiring predefined additional information before providing each recipient processor determined to be within the predefined location or region access to first information; and providing each recipient processor not determined to be within the predefined location or region with access to second information without requiring the predefined additional information, wherein the first information is a partial access but not full access information to a product or service and the second information is full access information to the product or service (as recited in claim 59).

Interpretation:

If the above bolded branches of Claim 49 are chosen, (and they herein are so chosen for prior art application), claim 49 becomes the equivalent of claim 59.

Thus claim 40 is directed to, for a customer within a region, giving access to the 1st information with required additional information; and for one determined to be outside the region the 1st information can be accessed without required additional information. For claims 49 and 59, the 1st information is partial but not full access information, and the second information is full access information.

As stated in the last Office Action, BEDNAREK teaches a sports event can be blocked inside the city where the event takes place and not outside such defined boundaries (e.g. col. 23 lines 59-62: sports event excluded from region R2 of Figure 14; Figures 7, 14 and associated text; col. 23 lines 30-52: locations restrictions÷also citations below).

As to claim 40, the sports event information is considered the 1st information.

Thus BEDNAREK teaches free (not blocked) access to this 1st information outside the predetermined area and no access to 1st information inside the area (e.g. event city). Since

BEDNAREK also teaches each signal conditioned on location can also have other non-geographic conditions attached thereto, e.g. such as pay per view (ppv), (i.e. “ requiring predefined additional information before providing access to.. information”) (see e.g. col. 3 lines 59-60: payment for service information required ;e.g. Figure 8 items 424, 430 and associated text), thus it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA"), in view thereof, to charge ppv fees to those within the event city who desire the convenience of viewing the event from their home. Event promoters and affiliates would be motivated to provide such ppv option to meet such demand (otherwise customers would not have had the viewing opportunity because of the blockage), and since it is a source of revenues. *(In fact, BEDNAREK does disclose pay per view or paid sports premium channel broadcast in a region when an event is blacked out, see e.g. col. 23 lines 59-62).* In this scenario, claim 40 is met, since the required additional information within the event city is payment information.

As to claims 49 and 59, the whole programming content including the sports event (i.e. including news other channels etc...) is considered the claimed full access information (also the claimed “second information”). The whole programming content minus the sports event is considered the claimed “partial but not full access information to a service” (also the claimed “first information”).

Thus BEDNAREK teaches free (not blocked) full access information outside the predetermined area (event city) and partial access information inside the area (e.g. event city).

As stated in the last Office Action, “*Region-exclusion signals are accessible only if the set-top box is outside of one or more regions where reception is not allowed.*” (Bednarek, abstract) means that there is partial access to information (content) inside the region where the exclusion applies, **and full access outside that region.** See also, e.g. col. 23 lines 59-62: sports event excluded from region R2 of Figure 14, reads on partial access within the region R2, full

access outside R2. Also see col. 21 lines 33-36, (discussed in connection with Figure 12): partial access.

*(Also see e.g. Figures 7, 14 and associated text, col. 23 lines 30-52: locations restrictions) (region exclusion signals (e.g., sports event may be shown in areas only outside of the city, area, or state in which the event takes place: access to some content **excluding sports event reads on partial access, within the region e.g. city where event takes place; while full access, i.e. content including sports event, is provided outside the city region)**)"*

Since BEDNAREK teaches each signal conditioned on location can also have other non-geographic conditions attached thereto, e.g. pay per view (ppv), as explained for claim 40, it would have been obvious to a PHOSITA, to charge ppv fees to customers who would want to view the blocked event from their home, for additional revenues to event promoters, while meeting customer demand. *(In fact, BEDNAREK does disclose ppv in a region where an event is blocked out, see e.g. col. 23 lines 59-62).*

Further, Official Notice is taken that it is old and well-known some sports events such as the Olympic Games are made of many events, each fetching a viewing fee.

In view of Benarek, it would have been obvious to a PHOSITA, the Olympic Games events would have been blocked in the city where they take place.

It is interpreted, in an Olympic Sports events scenario, that whole programming content (e.g. news etc...) including all the Olympic Games events is the claimed full access information (also the claimed "second information"). The content minus any Olympic Games events is considered the claimed partial access information (also the claimed "first information").

A customer within an Olympic Games city where all such events are blocked might want to buy just one event, e.g. Event A. This would read on partial access since e.g. Games B to Z are blocked. Yet "predefined additional information "(payment for Event A) is required. A customer

outside the city would have full access (to all programming content including all Olympic Games events) without having to give the required additional information (payment for event A). In this scenario, claims 49 and 59 are met.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues:

"It is beyond the teachings or suggestions of Bednarek to require additional information from customers in certain cities, but not require additional information from customers in other cities to access a particular content." and "None of the references of record (including Bednarek) would have taught or suggested to one of ordinary skill in the art to apply free giveaway programs in one set top box location, but require payment for the same information for set top boxes in another location".

Contrary to argument, BEDNAREK teaches not blocking (i.e. giving free) content such as sports events outside the event city. Inside the event city, where the content is blocked and more valuable to residents, in view of Bednarek's teachings cited above, it would have been obvious to charge a pay per view fee to meet demand and to raise revenues. In fact, BEDNAREK discloses such pay per view in blocked events areas. See e.g. col. 23 lines 59-62.

(Note: for claim 49, though not needed under the above interpretation of claim 49 being equivalent to claim 59, as stated in last Office Action, **BEDNAREK also teaches** (another scenario) *wherein the first information is giving full access to a service:*

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(“Region-specific signals are accessible only if the set-top box is in a geographic region authorized for reception, there being several such regions.” (abstract) reads on full access within the region, partial access outside the region. Also see e.g. col. 21 lines 29-33 (discussed in connection with Figure 12) reads on full access.

Claims 41 and 50:

Bednarek further implicitly discloses wherein requiring additional information comprises communicating a query from the provider processor to each recipient processor determined to be within the predefined location or region for the additional information (implicitly at least the user device ID is requested by the system).

Claims 43 and 52:

Bednarek further discloses the additional information comprises payment information (col. 3 lines 57-65: e.g. subscription payment information required).

Claims 46 and 55:

Bednarek in view of Official Notice discloses the methods of claims 40 and 49 and further discloses wherein the additional information comprises user identification information (implicitly at least the user device ID is requested by the system; see also e.g. Figure 8 items 424, 430 and associated text).

Claims 47 and 56:

Bednarek in view of Official Notice discloses the methods of claims 40 and 49 and further discloses wherein receiving location information comprises receiving location information over the network by the provider processor and determining comprises determining,

by the provider processor, (see at least Figure 1 item 16 and associated text; e.g. col. 7 lines 56-59).

Claims 48 and 57:

Bednarek in view of Official Notice discloses the methods of claims 40 and 49 and further discloses receiving location information comprises receiving location information by the given recipient processor (e.g. col. 20 lines 51-58: STB is movable and needs to determine in what region it's located; see e.g. Fig. 12 and associated text) and determining comprises determining, by the given recipient processor, whether the geographic location of the given recipient processor is within a predefined location or region (citations above; also see e.g. col. 21 lines 51-57))

Claims 42 and 51:

Bednarek in view of Official Notice discloses the methods of claims 40 and 49 but does not specifically disclose the additional information required comprises user age information. However it does disclose parental restrictions (col. 3 lines 57-65). It would have been obvious to one skilled in the art at the time the invention was made to add querying for user age information to Bednarek 's teaching of parental restrictions, in order to provide appropriate content based on the age restriction.

Claims 44 and 53:

Bednarek does not specifically disclose the additional information comprises a user indication that a waiver, license or disclaimer is accepted. **However Official Notice is further taken** that it is well-known that certain products or services are sold with warnings or disclaimers. For example some online content to be accessed by the user by download to a user device would be preceded by disclaimers as to the appropriateness of the content. Usually user acceptance of the disclaimer is required before the download can proceed. It would have been obvious to one skilled in the art at the time the invention was made to add requiring such acceptance by the user to the Bednarek teaching of downloading content to the user device,

before sending the first information, to ensure the user agrees with the appropriateness of the content before the download.

Claims 45 and 54:

Bednarek in view of Official Notice discloses the methods of claims 40 and 49 and but does not disclose the additional information comprises current time information. However **Official Notice is further taken that** it is well-known to provide content based on time so the content such as advertising would be relevant. Thus it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to add to BEDNAREK the additional information being current time information so to provide such time-relevant content.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Monday-Wednesday 9:00-

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6:00. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, LYNDIA JASMIN can be reached on (571)272-6782. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314). Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Khanh H. Le/

Primary Examiner, Art Unit 3688